

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

HOLLIE L. GIAMPIETRO and	:	
ALBERT GIAMPIETRO,	:	
	:	C. A. No. 1:07-cv-535
Plaintiffs,	:	
	:	
V.	:	
	:	
JOAN MILES HARGROVE and	:	
TRANSCONTINENTAL	:	
REFRIGERATED LINES, INC. d/b/a	:	
TRL., INC.,	:	
	:	
Defendants.	:	

PLAINTIFFS' MOTION FOR REMAND TO DELAWARE SUPERIOR COURT

1. This action was commenced in the Superior Court of the State of Delaware in and for New Castle County on July 30, 2007, by Plaintiffs, residents of Delaware, alleging damages related to a motor vehicle accident that occurred in New Castle County, Delaware on August 30, 2005. Defendants reside in Connecticut and Pennsylvania.

2. On September 12, 2007, Defendants filed a notice of removal of this case to the United States District Court for the District of Delaware. The stated basis for removal is due to the fact that there exists diversity of citizenship between the parties and the amount in controversy is in excess of \$75,000.00, as required by 28 U.S.C. §1332.

However, Plaintiff did not receive notice until September 18, 2007.

3. It is undisputed that Plaintiffs and Defendants are domiciled in different states. However, Plaintiffs submit that the sum of the matter in controversy *does not exceed* \$75,000.00.

4. Respectfully, in placing an amount on a case, this Court must reasonably determine a value on the case, based on the initial complaint filed by the Plaintiff. Werwinski v. Ford Motor Co., 286 F.3d 661, 666 (3d Cir. 2002) (Citing Angus v. Shiley, Inc., 989 F2d 142, 146 (3d Cir. 1993)). In the case at hand, as a result of the accident, Plaintiff incurred approximately \$16,000.00 in medical bills, as well as non-surgical, permanent injury to her low back. Similar cases historically settle for less than \$75,000.00. This case was filed in Superior Court as an arbitration case, which clearly confirms that it has a value less than \$100,000.00. Moreover, the Defendants have not made a settlement offer in excess of \$75,000.00.

5. For the aforementioned reasons, this case is not removable to Federal Court because the value of the claim does not reasonably exceed the threshold amount of \$75,000.00. Hence, respectfully, this Court lacks jurisdiction over this matter. Since this Court does not have jurisdiction over this case, it should be remanded to the Superior Court of the State of Delaware.

WHEREFORE, Plaintiffs, by and through their attorneys, hereby move this Court for an Order remanding this case to Delaware Superior Court, pursuant to 28 U.S.C. §1447, and directing that the Defendants pay the Plaintiffs just costs, and expenses, including attorney's fees, incurred as a result of the improper removal of this case.

/s/ Jonathan B. O'Neill

JONATHAN B. O'NEILL, ESQ.
Bar ID: 4442

/s/ William R. Peltz

WILLIAM R. PELTZ, ESQUIRE

Bar ID: 2675

Kimmel, Carter, Roman & Peltz

200 Biddle Avenue, Suite 101

Newark, Delaware 19702

(302) 392-5277

Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

HOLLIE L. GIAMPIETRO and
ALBERT GIAMPIETRO,

Plaintiffs,

V.

JOAN MILES HARGROVE and
TRANSCONTINENTAL
REFRIGERATED LINES, INC. d/b/a
TRL., INC.,

Defendants.

C. A. No. 1:07-cv-535

ORDER

IT IS HEREBY ORDERED this _____ day of _____
, 2007, that this case is remanded to the Delaware Superior Court and Defendants shall
pay Plaintiffs attorney's fees in the amount of _____.

JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

HOLLIE L. GIAMPIETRO and
ALBERT GIAMPIETRO,

Plaintiffs,

V.

JOAN MILES HARGROVE and
TRANSCONTINENTAL
REFRIGERATED LINES, INC. d/b/a
TRL., INC.,

Defendants.

C. A. No. 1:07-cv-535

NOTICE OF SERVICE/MAILING

The undersigned, counsel for Plaintiffs, hereby certify that on October 16, 2007, two (2) copies of the Plaintiffs' Motion For Remand to Delaware Superior Court were served/mailed to:

Raymond W. Cobb, Esquire
Three Mill Road, Suite 206
Wilmington, DE 19806

/s/ Jonathan B. O'Neill

JONATHAN B. O'NEILL, ESQ.
Bar ID: 4442

/s/ William R. Peltz

WILLIAM R. PELTZ, ESQUIRE
Bar ID: 2675
Kimmel, Carter, Roman & Peltz
200 Biddle Avenue, Suite 101
Newark, Delaware 19702
(302) 392-5277
Attorneys for Plaintiffs